

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

ELLERY NITCHER,

Plaintiff,

v.

COMMISSIONER OF  
SOCIAL SECURITY,

Defendant.

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Case No. 08-11850

Hon. Gerald E. Rosen

Magistrate Judge R. Steven Whalen

**ORDER ADOPTING  
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

At a session of said Court, held in  
the U.S. Courthouse, Detroit, Michigan  
on August 31, 2009

PRESENT: Honorable Gerald E. Rosen  
Chief Judge, United States District Court

On May 13, 2009, Magistrate Judge R. Steven Whalen issued a Report and Recommendation ("R & R") recommending that the Court grant Plaintiff Ellery Nitcher's motion for summary judgment, deny the Defendant Commissioner of Social Security's motion for summary judgment, and remand this case for further administrative proceedings. Neither party has filed objections to the R & R. Upon reviewing the R & R, the parties' underlying motions, and the record as a whole, the Court concurs in the analysis of the Magistrate Judge, and adopts the R & R in its entirety.

Accordingly,

NOW, THEREFORE, IT IS HEREBY ORDERED that the Magistrate Judge's May 13, 2009 Report and Recommendation is ADOPTED as the opinion of this Court. IT IS FURTHER ORDERED that, for the reasons stated in the R & R, Plaintiff's motion for summary judgment (docket #7) is GRANTED, and Defendant's motion for summary judgment (docket #11) is DENIED.

s/Gerald E. Rosen  
Chief Judge, United States District Court

Dated: August 31, 2009

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 1, 2009, by electronic and/or ordinary mail.

s/Ruth Brissaud  
Case Manager